

Before the  
Federal Communications Commission  
Washington, D.C. 20554

|                                 |   |                             |
|---------------------------------|---|-----------------------------|
| In the Matter of                | ) |                             |
|                                 | ) | File Number: EB-06-DL-075   |
| Community Broadcast Group, Inc. | ) |                             |
|                                 | ) | NAL/Acct. No.: 200732500003 |
| Licensee of Station KZEY        | ) |                             |
| Tyler, Texas                    | ) | FRN: 0003773140             |
| Facility ID # 12809             | ) |                             |
|                                 | ) |                             |

**FORFEITURE ORDER**

**Adopted:** March 22, 2007

**Released:** March 29, 2007

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eleven thousand dollars (\$11,000) to Community Broadcast Group, Inc., (“Community”) licensee of AM Broadcast Radio station KZEY, in Tyler, Texas, for willful and repeated violation of Sections 73.1350(a) and 73.3526 of the Commission's Rules (“Rules”).<sup>1</sup> The noted violations involve Community’s failure to operate the station in accordance with the station authorization and failure to make available a complete public inspection file.

**II. BACKGROUND**

2. On June 5, 2006, agents from the Commission’s Dallas Office of the Enforcement Bureau (“Dallas Office”) conducted an inspection of station KZEY’s main studio located in Tyler, Texas. When the agents asked to inspect the station’s public inspection file during regular business hours, the station could not produce a complete file. The file contained no Radio Issues/Program lists from any quarter. At the transmitter site, the agents found that the station was operating in an omni directional mode from a single tower. The station authorization for station KZEY requires that the station operate in a two tower directional configuration. Station personnel stated that the station had been operating in a directional mode from a single tower for more than a year.

3. On January 30, 2007, the Commission’s Dallas Office of the Enforcement Bureau (“Dallas Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$11,000 to Community.<sup>2</sup> Community submitted a late-filed response to the NAL requesting a reduction of the forfeiture, which was received by the Dallas Office on March 22, 2007.<sup>3</sup>

<sup>1</sup> 47 C.F.R. §§ 73.1350(a), 73.3526.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732500003 (Enf. Bur., Dallas Office, released January 30, 2007).

<sup>3</sup> Community did not request an extension of time in which to submit its response to the NAL. Its response was due March 1, 2007. Although we are not required to consider its late-filed response, we will address the merits of Community’s response herein.

### III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended,<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Community's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup>

5. Section 73.1350(a) of the Rules states that each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization. KZEY's station authorization requires that the station utilize a two-tower directional array during the day and night. On June 5, 2006, station KZEY was operating in a non-directional mode on a single tower. Station personnel stated during the inspection that station KZEY had been transmitting with a non-directional pattern for more than a year. In response to the *NAL*, Community admits that it was operating in a non-directional mode on a single tower, but claims it was operating in this fashion for less than a year. Community claims that it made plans to put the station back at the two-tower configuration prior to the inspection.<sup>7</sup> Thus, Community's response to the *NAL* supports the finding that it willfully operated its station in a manner inconsistent with its station authorization for more than one day.

6. Section 73.3526(a)(2) of the Rules<sup>8</sup> requires broadcast stations to maintain for public inspection a file containing materials listed in that section. Section 73.3526(c)(1) of the Rules<sup>9</sup> states that the file shall be available for public inspection at any time during regular business hours. Section 73.3526(e)(12) of the Rules<sup>10</sup> requires licensees to place in the public inspection file, for each calendar quarter, a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. This list is known as the radio Issues/Programs list. On June 5, 2006, in response to a request made to inspect the station's public file during normal business hours, station KZEY was unable to produce any copies of the station's radio Issues/Programs lists for any quarter. During the inspection, the agents saw no evidence that the lists were ever maintained in the public file. In its response to the *NAL*, Community claims that the regular office workers, who were not at the station during the inspection, would have been able to produce a complete inspection file. Community, however, provided no evidence in support of its claim that it had maintained Issues/Programs lists at the station. Even assuming *arguendo* that the Issues/Programs lists were located at the station, it is undisputed that, during the inspection, station KZEY was unable to make available a complete public inspection file.

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>7</sup> Community provided no specific information or evidence of these plans, so we are unable to determine whether a reduction based on good faith efforts to comply is warranted.

<sup>8</sup> 47 C.F.R. § 73.3526(a)(2).

<sup>9</sup> 47 C.F.R. § 73.3526(c)(1).

<sup>10</sup> 47 C.F.R. § 73.3526(e)(12).

7. Based on the evidence before us, we find that Community willfully<sup>11</sup> and repeatedly<sup>12</sup> violated Sections 73.1350(a) and 73.3526 of the Rules by failing to operate its station consistent with the terms of its station authorization and failing to make available and maintain a complete public inspection file.

8. Community states that it requested and received a Special Temporary Authority to operate soon after the inspection. However, corrective action taken to come into compliance with the Rules and does not nullify or mitigate any prior forfeitures or violations.<sup>13</sup>

9. Community also claims that payment of an \$11,000 forfeiture would pose a hardship for the station, but it failed to provide any financial documentation in support of its claim. Therefore, we are unable to determine whether a reduction based on inability to pay is warranted. In the alternative, Community requests an installment payment plan. Community may make such a request to the Associate Managing Director, as described in paragraph 11, herein.

10. We have examined Community's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Community willfully and repeatedly violated Sections 73.1350(a) and 73.3526 of the Rules and that no reduction of the proposed \$11,000 forfeiture is warranted.

### III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>14</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,<sup>15</sup> Community Broadcast Group, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$11,000 for violation of Sections 73.1350(a) and 73.3526 of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>16</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate

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<sup>11</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>12</sup> The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>13</sup> See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

<sup>14</sup> 47 U.S.C. § 503(b).

<sup>15</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>16</sup> 47 U.S.C. § 504(a).

Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>17</sup>

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Community Broadcast Group, Inc. at its address of record.

**FEDERAL COMMUNICATIONS COMMISSION**

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau

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<sup>17</sup> See 47 C.F.R. § 1.1914.